

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.1103 Credit for reinsurance as asset or reduction from liability; accredited reinsurer; trust fund; report to commissioner; assuming insurer not meeting requirements of section or authorized to transact insurance; obligation to arbitrate; trust agreement.

Sec. 1103. (1) A ceding insurer shall be allowed credit for reinsurance as either an asset or a reduction from liability on account of reinsurance ceded only if the reinsurance is ceded to an assuming insurer that is authorized to transact insurance or reinsurance in this state or that meets the requirements of subsection (2), (3), or (4). For an assuming insurer that is licensed to transact insurance or reinsurance in this state or that meets the requirements of subsection (2) or (3), credit shall be allowed only for cessions of those kinds or classes of business that the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, for a United States branch of an alien insurer, in the state through which it is entered and is licensed to transact insurance or reinsurance.

(2) A ceding insurer shall be allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance ceded if the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. Credit for reinsurance ceded is not allowed if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited reinsurer under this subsection is a reinsurer that meets all of the following:

- (a) Files with the commissioner evidence of the reinsurer's submission to this state's jurisdiction.
- (b) Submits to this state's authority to examine its books and records.
- (c) Is licensed to transact insurance or reinsurance in at least 1 state or for a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least 1 state.
- (d) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and meets 1 of the following:
 - (i) Maintains a surplus as regards policyholders of \$20,000,000.00 or more and whose accreditation has not been denied by the commissioner within 90 days of its submission.
 - (ii) Maintains a surplus as regards policyholders of less than \$20,000,000.00 and whose accreditation has been approved by the commissioner.

(3) A ceding insurer shall be allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance ceded if the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ceding insurers, their assigns, and successors in interest, the trust agreement complies with subsection (7), and the assuming insurer submits to the commissioner's authority to examine its books and records and bears the expense of the examination. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported by authorized insurers pursuant to section 438 to enable the commissioner to determine the sufficiency of the trust fund. The trust fund shall meet all of the following:

(a) For a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trustee surplus of an amount sufficient in the opinion of the commissioner to maintain compliance with section 403 as respects reinsurance ceded by United States ceding insurers but not less than \$20,000,000.00.

(b) For a group including incorporated and individual unincorporated underwriters:

(i) For reinsurance ceded under reinsurance agreements with an inception date, amendment, or renewal date on or after August 1, 1995, the trust shall consist of a trustee account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any group member.

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding any other provision of this section, the trust shall consist of a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States.

(iii) In addition to subparagraphs (i) and (ii), the group shall maintain a trustee surplus of which an amount sufficient in the opinion of the commissioner to maintain compliance with section 403 as respects reinsurance ceded by United States domiciled ceding insurers but not less than \$100,000,000.00 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group for all years of account. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and are subject to the same level of regulation and solvency control by the group's

domiciliary regulator as are the unincorporated members. Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide the commissioner with an annual certification of the solvency of each underwriter member by the group's domiciliary regulator or if certification is unavailable, financial statements prepared by independent public accountants for each underwriter group member.

(c) The trust and any amendments to the trust shall be established in a form approved by the commissioner of the state where the trust is domiciled or the commissioner of another state who pursuant to the trust instrument terms has accepted principal regulatory oversight of the trust. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner, and the expense of the examination shall be borne by the assuming insurer. The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust does not expire prior to the following December 31.

(4) A ceding insurer shall be allowed credit for reinsurance ceded as either an asset or a reduction from liability on account of reinsurance ceded if reinsurance is ceded to an assuming insurer not meeting the requirements of this section but only for the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(5) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsection (3) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements to both of the following:

(a) That if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or any appellate court if there is an appeal.

(b) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(6) The provisions of subsection (5) are not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

(7) The credit permitted by subsection (3) shall not be allowed unless the assuming insurer agrees in the trust agreement to all of the following:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subsection (3), or if the trust grantor has been declared or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(b) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight determines that the trust fund assets or any part of the trust fund assets is not necessary to satisfy the claims of the United States ceding insurers of the trust grantor, the trust fund assets or any part of the trust fund assets shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(d) The trust grantor waives any right otherwise available under United States laws inconsistent with subdivisions (a) to (c).

History: Add. 1994, Act 226, Imd. Eff. June 27, 1994;—Am. 1994, Act 443, Imd. Eff. Jan. 10, 1995;—Am. 2000, Act 283, Imd. Eff. July 10, 2000.

Compiler's note: Enacting section 1 of Act 283 of 2000 provides:

"Enacting section 1. The legislature declares that the provisions of this amendatory act are fundamental to the business of insurance as provided in sections 1 and 2 of chapter 20, popularly known as the McCarran-Ferguson act, 59 Stat. 33 and 34, 15 U.S.C. 1011 and 1012. It is the intent of this amendatory act that upon the insolvency of an alien insurer or reinsurer that provides security to fund its United States obligations under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, the assets representing the security shall

be maintained in the United States and claims shall be filed with and valued by the state insurance commissioner with regulatory oversight, and the assets shall be distributed under the insurance laws of the state where the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies.”

Popular name: Act 218